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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Amendment of Part 90
of the Commission's Rules
Governing Extended
Implementation Periods

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RM - 7974

ORIGINAL
FILE

To: The Commission

COMMENTS OF FLEET CALL, INC.

FLEET CALL, INC.

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I. INTRODUCTION

Fleet Call, Inc. ("Fleet Call"), pursuant to Section 1.415 of the Federal Communications Commission's (the "FCC") Rules and Regulations, respectfully files its Comments in the above-captioned proceeding.

On October 13, 1992, the Commission released a Notice of Proposed Rulemaking (the "Notice")^{1/} proposing to amend Section 90.629 of its Rules governing extended implementation schedules. The Commission proposed extending the Rule's applicability to Specialized Mobile Radio ("SMR") systems,^{2/} lengthening the extended implementation or "slow growth" period from three to five years, not requiring applicants to serve a minimum 200 mobile unit

^{1/} Notice of Proposed Rulemaking, 7 FCC Rcd 6587 (1992).

^{2/} Currently, Section 90.629 of the Rules provides that applicants in the Public Safety, Industrial/Land Transportation, Business and General Categories may, under specified circumstances, be granted an extended period for constructing and placing a station in operation.

fleet, and eliminating the annual reporting requirement. The Commission also proposed amending Sections 90.629 and 90.631 to clarify its takeback policies for failing to meet extended implementation construction and loading benchmarks.

II. BACKGROUND

Fleet Call is one of the nation's leaders in developing advanced, highly-efficient wide-area digital mobile communications systems. On February 13, 1991, the Commission authorized Fleet Call to construct and operate 800 MHz Enhanced Specialized Mobile Radio ("ESMR") in Chicago, Dallas, Houston, Los Angeles, New York and San Francisco.^{3/} These systems will incorporate innovative state-of-the-art technology, including digital speech coding, Time Division Multiple Access ("TDMA") transmission and frequency reuse to create in excess of 15 times the customer capacity of existing SMR systems while providing improved transmission quality and enhanced services. The first ESMR system will be operational in Los Angeles in the summer of 1993 followed by San Francisco in 1994.

The Commission recognized that the novelty and complexity of Fleet Call's ESMR initiative made it virtually impossible to meet the one-year construction requirement of Section 90.631 for trunked systems. Moreover, since Fleet Call sought only to reconfigure its fully loaded existing systems, there was no risk of spectrum

^{3/} In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991) (the "Fleet Call Waiver Order"), recon. den. 6 FCC Rcd 6989 (1991).

hoarding or failure to construct.^{4/} Accordingly, the Commission waived Section 90.631 permitting Fleet Call five years to construct its ESMR networks.^{5/} Fleet Call's status as a "slow growth" licensee for its ESMR systems gives it a knowledgeable perspective and expertise on applying the extended implementation rules to SMR systems.

In this Notice, the Commission observes that an increasing number of SMR applicants are proposing technically innovative wide-area advanced SMR systems.^{6/} It states that the complexity and expense of such SMR systems merits an extended implementation period. Accordingly, the Commission proposes amending Section 90.629 to include SMR applicants. It also proposes amending the Rule to permit "slow growth" licensees up to five years to construct and place their systems in operation and eliminating the requirement that "slow growth" applicants serve at least 200 mobile units. These Rule changes are intended to facilitate development of innovative, spectrally efficient communications systems for both large and smaller service providers.

The Commission would also amend Section 90.629(b) to clarify that extended implementation licensees are required to load their systems to 70 mobiles per channel within five years of

^{4/} Id. at para. 26.

^{5/} Id. at paras. 21, 25-27.

^{6/} At present, there are approximately 10 applications pending at the Commission for advanced, wide-area SMR systems each requiring more than one year to construct and place in operation.

authorization or lose the unloaded channels.^{7/} Applicants would be required to submit an implementation schedule with benchmarks for constructing proposed base stations, including identification of channels to be constructed at each station at the indicated benchmarks.^{8/}

III. COMMENTS

A. Fleet Call Supports Codifying the Commission's Policy of Granting Extended Implementation Periods for Innovative, Advanced SMR Systems

Fleet Call supports the Commission's proposal to expand Section 90.629's applicability to SMR systems. The Commission has waived its usual SMR construction rules to provide "slow growth" flexibility for SMR applicants proposing "innovative, spectrum efficient and ambitious project[s] of large scope and scale."^{9/} Recently, the Commission has waived the one-year construction requirement for trunked SMR systems to permit applicants five years to reconfigure existing traditional analog SMR stations into advanced, wide-area digital systems.^{10/} The public interest

^{7/} In short, the same loading requirements would apply to all licensees of trunked systems -- whether granted extended implementation or not. See Notice at n. 9.

^{8/} Notice at n. 10 and proposed Section 90.629(a).

^{9/} American Mobile Data Communications, Inc. 4 FCC Rcd 3802 (1989); See also IBM Research and Development Inc., 53 RR 2d 675 (1983); Advanced Train Control System, 3 FCC Rcd 427 (1988); Millicom Radio Telephone Co., Letter No. 7320-12, Land Mobile and Microwave Division, May 17, 1990.

^{10/} Fleet Call Waiver Order, supra n. 3; Letter, dated April 13, 1992, from Richard J. Shibben, Chief Land Mobile and Microwave Division, to George Hertz, President Advanced MobileComm of New England, Inc. (the "MRNE Approval Letter"); Application of Advanced Radio Communication Services of Florida, Inc. ("Advanced Radio")

would be served by codifying this policy for all applicants proposing similarly complex, spectrally efficient, wide-area SMR systems offering enhanced mobile communications capabilities to the public.

SMRs were not included in the Commission's extended implementation rules to prevent scarce SMR spectrum from being warehoused. If a licensee failed to construct and initiate service, its authorization would cancel and become available to other prospective service providers. This regulatory approach worked well and is largely responsible for the industry's rapid growth -- particularly in markets with the greatest demand for private land mobile services.

The Commission has recognized that SMRs must introduce more efficient technology to overcome spectrum capacity limits in the largest markets.^{11/} Current SMR rules and policies inhibit the efficient introduction of wide area SMR systems competitive with other mobile communications offerings and responsive to customer needs.^{12/} Amending Section 90.629 to codify an extended implementation scheme for more complex, advanced SMR networks would reduce regulatory burdens, facilitate the delivery of improved services, increase user capacity and provide SMR entrepreneurs

for Authority to Integrate Four Trunked Stations Into One System, filed July 15, 1991.

11/ See e.g., Fleet Call Waiver Order at para. 11.

12/ See e.g., Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, 4 FCC Rcd 8673 (1989).

additional time to bring the benefits of digital technology to customers in smaller, less densely populated areas.

B. The Proposed "Takeback" Provisions Would Undercut the Implementation Flexibility Required by Enhanced Wide Area SMR Systems

The Commission also proposes eliminating Section 90.629's annual reporting requirements in favor of a license condition mandating the loss of all channels not constructed and placed in operation in accordance with the licensee's approved implementation schedule.^{13/} Proposed Section 90.629(c)(1) provides that an extended implementation system is not "constructed" unless all base stations in the system are constructed in accordance with the system description provided as part of its "slow growth" justification. As set forth in the Notice, it would require that all base stations be constructed with all channels identified in the implementation schedule submitted as part of the "slow growth" application.

This proposal appears intended as a balance between the policy objectives served by extended implementation periods and the Commission's goal of recovering scarce unused spectrum. This may not be a problem for traditionally-configured private land mobile communications systems using a pre-determined group of frequencies. It could, however, seriously impede dynamic system design and

^{13/} The proposed rule also provides for automatic cancellation of any channels not loaded to 70 mobile stations at the end of five years if all channels are assigned in the system's geographic area. Thus the proposed rule provides an extended implementation period of up to five years to construct, place in operation and load "slow growth" systems.

development for advanced SMR systems employing multiple base stations with extensive frequency reuse.

An enhanced or advanced SMR system will undergo substantial modification over its extended implementation period due to changes in the surrounding RF environment, propagation testing and equipment fine-tuning. Requiring construction of a pre-determined list of frequencies at specified base stations is unrealistic. Strict adherence to a list of base stations submitted at the application stage may also be impractical.

For these reasons, Fleet Call submits that Sections 90.629(b) and (c)(1) of the proposed rules would, if implemented as described above, undercut the system design flexibility essential to a digital, frequency reuse advanced SMR system. This would be inconsistent with the purposes of including such SMRs in the extended implementation rule. The Commission has not provided criteria for determining whether specific channels are "constructed" in an advanced SMR system.^{14/} These matters require further consideration.^{15/} Accordingly, the above-cited provisions of the proposed rule should not be applied to SMR systems.

^{14/} In a digital system, the transmitter can be tuned to operate on any eligible frequency unlike analog systems requiring a transmitter for each operating frequency. The Commission has not addressed how construction is met in this environment.


^{15/} The Commission could include these issues in a rulemaking concerning advanced SMR systems, such as that proposed by the American Mobile Telecommunications Association in RM - 8117.

IV. CONCLUSION

Fleet Call supports amending the Commission's Rules to include extended implementation provisions for SMR systems proposing to implement innovative, spectrally-efficient SMR systems. This would codify the Commission's existing policies and facilitate construction and operation of such systems. The Commission should not, however, adopt restrictions that impose unwarranted limitations on the flexibility required by advanced SMR licensees to design systems with maximum capacity and minimal interference. The appropriate means to assure compliance with "slow growth" benchmarks for such SMR systems requires further consideration by the Commission.

Respectfully submitted,

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